IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 745 OF 2007

The State of Maharashtra
through Dy. Engineer,Chiplun.... Petitioner

versus

Dawood H. Jundre ..... Respondent.

Shri D.A.Patil AGP for thepetitioner
Shri M.S.Topkar for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 10TH APRIL, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. It is undisputed that the respondent was working as a labourer at the establishment of the petitioner in the year 1993. The respondent filed a complaint ULP NO. 17/95 under section 28 read with item 1 (a), (b),(d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act of 1971. The respondent had filed an application for condonation of delay as the filing of the complaint was delayed by about two years. The delay came to be condoned and thereafter parties went to the trial on merit. The respondent

has led oral evidence and stated in his deposition that the respondent was appointed with effect from 21-12-1979 and at the time of initial appointment, he was paid daily wages at the rate of Rs. 42.40/-. The respondent contended in the said complaint that he was illegally terminated with effect from 19-2-1993 without complying the provisions of section 25-F and 25-G of the Industrial Disputes Act. It was the case of the respondent that his juniors were retained and the respondent was terminated for no just and valid reason. The respondent had deposed before the labour court that he had completed 240 days of service in the year preceding the date of termination and thus was entitled to protection of section 25(F) and (G) of the Industrial Disputes Act. As the petitioner had denied the claim made by the respondent that he was in continuous service, the labour court had directed to produce the muster roll on record. However, it is not disputed by the learned counsel for the petitioner that the muster roll was not produced before the labour court and hence the labour court has proceeded to draw an adverse inference against the petitioner that had it produced the muster roll the evidence would have gone against the petitioner. The petitioner did not lead any oral evidence. On appreciation of the evidence and material on record, the labour court found that the petitioner has engaged

in an unfair labour practice and hence granted reinstatement with continuity in service and full backwages from the date of filing of the complaint till the date of reinstatement.

3. In the aforesaid fact situation, the learned AGP appearing for the petitioner has contended that there was a delay in filing of the complaint and the delay was of two years. On account of the delay, it is submitted, that the petitioner can be assumed to have secured alternate employment. Inviting my attention to the observations made by the labour court which reads thus:

> "Once the relief of reinstatement is granted, the relief of full backwages logically and legally follows. I do not find any reason to depart to this general principle".

It is submitted that the recent trend of decisions of the Apex court reveals a departure from the said principle and that automatically full backwages ought not to follow the order of reinstatement. No other reason is spelt out by the labour court.

5. The learned counsel for the petitioner then submits that it is highly improbable that a young man

working as a labourer with the petitioner would not take up any other work for a period of more than 10 years and would sit ideal. The learned counsel urges to this court to take an over all view of the matter and reduce the backwages. On the contrary, the learned counsel for the respondent has supported the judgment of the labour court and that of the Industrial court granting full backwages. I am of the considered view that ends of justice would be met by reducing the back wages from 100% to 50%.

6. In the result, the writ petition is partly allowed. Writ petition to the extent it challenges the finding recorded by the labour court and upheld by the Industrial court in revision declaring that the petitioner has engaged in unfair labour practice under item I (a)(b) of Schedule IV and to the extent of further direction to the petitioner to cease and desist from such unfair labour practice so also the challenge to the grant of reinstatement of the complainant with continuity of service, the petition fails. However, the order passed by the labour court and the Industrial court to the extent it grants 100% backwages from the date of filing of the complaint till actual reinstatement is modified to the extent of granting 50% of the backwages from the date of filing of the complaint till the date of the judgment of the

labour court. Rule made absolute in the above terms.

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